

**REMARKS**

Claim 1 has been amended to incorporate the recitations of claim 2 with the correct spelling of Rhizobium, and to recite that the microorganism is an isolated microorganism based on the disclosure at, e.g., page 4, lines 4-5 in the application. Claim 5 has been amended based on the disclosure at, e.g., page 7, line 12 in the application.

Entry of the above amendment is respectfully requested.

**Rejection under 35 U.S.C. 101**

On page 2 of the Office Action, claims 1-2 are rejected under 35 U.S.C. 101 because, according to the Examiner, the claimed invention is directed to non-statutory subject matter.

In particular, the Examiner indicates that claims 1-2 read on products of nature which are not patentable, since the way they are claimed, they may be interpreted to be naturally occurring microorganisms.

In response, Applicants have amended claim 1 to recite an isolated microorganism based on the disclosure at, e.g., page 4, lines 4-5 in the application, and Applicants have canceled claim 2.

Applicants submit that amended claim 1 satisfies the requirements of 35 U.S.C. 101, and withdrawal of this rejection is respectfully requested.

**Rejection of Claim 2 under 35 U.S.C. 112, First Paragraph**

On page 2 of the office Action, claim 2 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to

enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In particular, the Examiner indicates that the microorganism recited in the claims must be obtainable by a repeatable method set forth in the specification or otherwise be readily available to the public. The Examiner notes that Applicants have deposited the organism but there is no indication in the specification as to public availability. The Examiner indicates that if the deposit is made under the terms of the Budapest Treaty then an affidavit or declaration by applicants, or a statement by an attorney of record over his or her signature and registration number, stating that the specific strain will be irrevocably and without restriction or condition released to the public upon the issuance of a patent, would satisfy the deposit requirement made herein.

In response, Applicants submit that *Rhizobium* sp. OKH-03 is deposited as FERM BP-10547 under the terms of the Budapest Treaty. In this regard, Applicants submit herewith a copy of its receipt in the case of an original deposition and a copy of a viability statement. Also, a Statement of Availability is submitted herewith, stating that all restrictions on the deposit of FERM BP-10547 will be irrevocably removed upon the granting of a patent.

In view of the above, Applicants submit that the claimed invention is fully enabled, and thus Applicants respectfully request reconsideration and withdrawal of this rejection.

**Rejection under 35 U.S.C. 112, Second Paragraph**

On page 5 of the Office Action, claims 1-8 are rejected under 35 U.S.C 112, second paragraph, as being indefinite.

In particular, the Examiner indicates that claims 1-2 are unclear as to whether they are purified microorganisms, and that all claims are rejected in this regard since they are dependent upon a rejected base claim. Also, the Examiner indicates that claim 5 is unclear for the recitation of "LE". In addition, the Examiner has objected to claim 2 because of a misspelling "Rhisobium".

In response, Applicants have clarified that the microorganism is an isolated microorganism, which Applicants submit should be considered definite. Also, Applicants have clarified in claim 5 that the LE medium is a medium comprising extracts of lettuce and egg yolk. In addition, Applicants have canceled claim 2, thereby overcoming the objection to that claim, and Applicants have spelled Rhizobium correctly upon incorporating the recitations of claim 2 into claim 1.

Thus, Applicants submit that the present claims satisfy the requirements of 35 U.S.C. 112, second paragraph, and withdrawal of this rejection is respectfully requested.

**Rejection of Claims 1 and 3-8 under 35 U.S.C. 112, First Paragraph**

On page 5 of the Office Action, claims 1 and 3-8 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the Rhizobium sp. OKH-03 (strain FERM-19483), does not reasonably provide enablement for any and all microorganisms that belong to the genus Rhizobium.

In response, Applicants have amended claim 1 to incorporate the recitations of claim 2, which has not been included in this rejection. Accordingly, Applicants submit that this rejection has been overcome, and withdrawal of this rejection is respectfully requested.

**Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

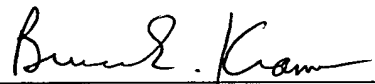
Respectfully submitted,

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WASHINGTON OFFICE

**23373**

CUSTOMER NUMBER

  
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Date: January 5, 2007



「特許手続上の微生物の寄託等の国際的承認  
に関するブダペスト条約」

BUDAPEST TREATY ON THE INTERNATIONAL  
RECOGNITION OF THE DEPOSIT OF MICROORGANISMS  
FOR THE PURPOSES OF PATENT PROCEDURE

下記国際寄託当局によって規則7.1に従い  
発行する。

RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT  
issued pursuant to Rule 7.1 by the INTERNATIONAL  
DEPOSITARY AUTHORITY identified at the bottom of this page.

## 原寄託についての受託証

氏名(名称)

寄託者

国立大学法人 京都工芸繊維大学  
学長 江島 義道 殿

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|---|--|
| I. 微生物の表示   |  |
| (寄託者が付した識別のための表示)<br>Rhizobium sp. OKH-03   | (受託番号)<br>FERM BP-10547  |
| II. 科学的性質及び分類学上の位置  |  |
| I欄の微生物には、次の事項を記載した文章が添付されていた。<br><input checked="" type="checkbox"/> 科学的性質<br><input checked="" type="checkbox"/> 分類学上の位置 |  |
| III. 原寄託申請の受託   |  |
| 本国際寄託当局は、 年 月 日に受領したI欄の微生物を受託する。  |  |
| IV. 移管申請の受託   |  |
| 本国際寄託当局は、平成 15 年 8 月 11 日(国内受託日)に受託したI欄の微生物を受託する。<br>(平成 15 年 8 月 11 日に寄託されたFERM P- 19483 より移管)                           |  |
| V. 国際寄託当局   |  |
| 独立行政法人産業技術総合研究所 特許生物寄託センター  |  |
| 名称  | International Patent Organism Depositary<br>National Institute of Advanced Industrial Science and Technology<br>センター長 山岡 正樹<br>Dr.Masakazu Yamaoka, Director |
| あて名   | 日本国 茨城県つくば市東1丁目1番地1 中央第6 (郵便番号305-8566)<br>AIST Tsukuba Central 6, 1-1, Higashi 1-chome Tsukuba-shi,<br>Ibaraki-ken 305-8566 Japan                           |
| 平成 18 年 (06) 3 月 3 日  |  |



「特許手続上の微生物の寄託等の国際的承認  
に関するブタペスト条約」

BUDAPEST TREATY ON THE INTERNATIONAL  
RECOGNITION OF THE DEPOSIT OF MICROORGANISMS  
FOR THE PURPOSES OF PATENT PROCEDURE

下記国際寄託当局によって規則10.2に従い  
発行される。

VIABILITY STATEMENT  
Issued pursuant to Rule 10.2 by the INTERNATIONAL  
DEPOSITARY AUTHORITY identified on the following page.

## 生存に関する証明書

氏名(名称) 国立大学法人 京都工芸繊維大学  
学長 江島 義道 殿

寄託者

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京都市左京区松ヶ崎橋上町1番地

|  |   |
|--|---|
| 1. 寄託者   | 2. 微生物の表示   |
| 氏名(名称)<br>国立大学法人 京都工芸繊維大学<br>学長 江島 義道<br><br>あて名 〒 606-8585<br>京都市左京区松ヶ崎橋上町1番地   | 受託番号:<br>FERM BP-10547<br><br>受託の日:<br>平成 15 年 8 月 11 日 |
| 3. 生存試験の結果   |   |
| 2欄の微生物の生存について平成 18 年 3 月 10 日に試験を実施した結果、当該微生物は、<br><input checked="" type="checkbox"/> 生存していた。<br><input type="checkbox"/> 生存していなかった。  |   |
| 4. 生存試験に際して使用した条件(結果が否定的である場合のみ)   |   |
| <input type="checkbox"/> 微生物条件記録書 1通   |   |
| 5. 国際寄託当局  |   |
| 独立行政法人産業技術総合研究所 特許生物寄託センター<br>名称 International Patent Organism Depositary<br>National Institute of Advanced Industrial Science and Technology<br><br>センター長 山岡 正<br>Dr. Masakazu Yamaoka, Director<br><br>あて名 日本国 茨城県つくば市東1丁目1番地1 中央第6(郵便番号305-8566)<br>AIST Tsukuba Central 6, 1-1, Higashi 1-Chome Tsukuba-shi,<br>Ibaraki-ken 305-8566 Japan |   |

平成 18 年 (2006) 3 月 20 日